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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 CHRIS CAVE,  
10 Plaintiff,

11 v.

12 M. O'BRINKLEY, et al.,  
13 Defendants.

Case No.: 2:20-cv-00413-APG-NJK

**REPORT AND RECOMMENDATION**

[Docket No. 40]

14 Pending before the Court is Plaintiff Chris Cave's motion for leave to file an amended  
15 complaint. Docket No. 40. The Court has considered Plaintiff's motion and the response filed by  
16 Defendants Brinkley and Mead ("Defendants"). No reply was filed. *See* Docket. The motion is  
17 properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed more fully  
18 below, the undersigned **RECOMMENDS** that the motion for leave amend be **DENIED**.

19 **I. LEGAL STANDARD**

20 When a party moves to amend the pleadings after the expiration of the deadline established  
21 in the scheduling order, courts review the motion through a two-step process. First, courts treat  
22 the motion as seeking to amend the scheduling order, which is governed by the "good cause"  
23 standard outlined in Rule 16(b).<sup>1</sup> *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th  
24 Cir. 1992). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party  
25 seeking amendment." *Id.* at 609. In particular, courts look to whether the deadline set in the  
26 scheduling order "cannot reasonably be met despite the diligence of the party seeking the

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28 <sup>1</sup> Unless otherwise noted, references to "Rules" refer to the Federal Rules of Civil Procedure.

1 extension.” *Id.* Although prejudice to the opposing party may also be considered, the focus of the  
2 inquiry is on the movant’s reasons for seeking modification. *Id.* “If that party was not diligent,  
3 the inquiry should end.” *Id.* The party seeking amendment bears the burden of establishing  
4 diligence. *Morgal v. Maricopa Cty. Bd. of Supervisors*, 284 F.R.D. 452, 460 (D. Ariz. 2012).

5 When good cause has been established under Rule 16(b), courts will then examine whether  
6 amendment is proper under the standards outlined in Rule 15(a). Rule 15(a) provides that “[t]he  
7 courts should freely give leave [to amend] when justice so requires[.]” Fed. R. Civ. P. 15(a). There  
8 is a strong public policy in favor of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757  
9 (9th Cir. 1999). Under Rule 15(a), courts consider various factors, including: (1) bad faith; (2)  
10 undue delay; (3) prejudice to the opposing party; (4) futility of the amendment; and (5) whether  
11 the plaintiff has previously amended the complaint. *Eminence Capital, LLC v. Aspeon, Inc.*, 316  
12 F.3d 1048, 1052 (9th Cir. 2003). These factors do not carry equal weight, however, with prejudice  
13 being the most significant factor. *Id.* The party opposing the amendment bears the burden of  
14 showing why leave should be denied. *Desert Protective Council v. U.S. Dept. of the Interior*, 927  
15 F. Supp. 2d 949, 962 (S.D. Cal. 2013).

## 16 **II. ANALYSIS**

17 On August 18, 2020, the Court entered a scheduling order setting the deadline to amend  
18 pleadings for September 22, 2020. Docket No. 23 at 2. Plaintiff filed the instant motion for leave  
19 to amend his complaint on November 24, 2020, two months after the deadline to amend pleadings  
20 expired. Docket No. 40. Therefore, Plaintiff must demonstrate good cause to modify the Court’s  
21 scheduling order.

22 Here, Plaintiff fails to address, let alone demonstrate, good cause for modifying the Court’s  
23 scheduling order. *See* Docket No. 40. Plaintiff submits that he “is not guilty of undue delay” and  
24 “is not late” to amend his complaint. *Id.* at 2–3. However, Plaintiff fails to show the diligence  
25 required for a finding of good cause. Having found that Plaintiff fails to establish good cause  
26 under Rule 16(b), the Court need not address whether amendment is proper under Rule 15(a).

1 **III. CONCLUSION**

2 Accordingly, **IT IS RECOMMENDED** that Plaintiff's motion for leave to amend his  
3 complaint be **DENIED**. Docket No. 40.

4 Dated: December 17, 2020

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6 Nancy J. Koppe  
United States Magistrate Judge

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8 **NOTICE**

9 This report and recommendation is submitted to the United States District Judge assigned  
10 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and  
11 recommendation must file a written objection supported by points and authorities within fourteen  
12 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file  
13 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951  
14 F.2d 1153, 1157 (9th Cir. 1991).